

IN THE
Supreme Court of the United States

MARY JO FLAHERTY, INTERIM DIRECTOR,
NEW JERSEY DIVISION OF
GAMING ENFORCEMENT, *et al.*,

Petitioners,

v.

KALSHIEX, LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

**BRIEF OF *AMICI CURIAE*
THE INTERNATIONAL ASSOCIATION OF
GAMING REGULATORS AND THE NORTH
AMERICAN GAMING REGULATORS
ASSOCIATION IN SUPPORT OF PETITIONERS**

MARC H. ELLINGER
ELLINGER BELL LLC
308 East High Street,
Suite 300
Jefferson City, MO 65101

MARC W. DUNBAR
Counsel of Record
DANIEL J. MCGINN
JONES WALKER LLP
106 East College Avenue,
Suite 1200
Tallahassee, FL 32301
(850) 214-5100
mdunbar@joneswalker.com

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Amicus Curiae, the International Association of Gaming Regulators certifies that it has no parent or publicly held company owning more than 10% of its stock.

Pursuant to this Court's Rule 29.6, Amicus Curiae, the North American Gaming Regulators Association certifies that it has no parent or publicly held company owning more than 10% of its stock.

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INTEREST OF AMICI CURIAE¹

The International Association of Gaming Regulators (“IAGR”) is an international association of gaming and gambling regulators, representing regulatory agencies and jurisdictions worldwide. IAGR seeks to advance effective gaming regulation through the education of, and advocacy on behalf of, its members. The North American Gaming Regulators Association (“NAGRA”) is comprised of the federal, state, local, tribal, and provincial government agencies that are primarily responsible for the regulation of legalized gaming. NAGRA collects and disseminates regulatory and enforcement information, procedures, and experiences from its member jurisdictions, provides gaming education and training to its members, and advocates for effective rules and regulations governing gaming activities.

IAGR and NAGRA (collectively, the “Associations”) do not take a position for or against gaming. Rather, the Associations focus on the development and application of effective regulatory frameworks and on the fair and consistent enforcement of gaming law.

Both IAGR and NAGRA represent members within the United States generally, and within the Third Circuit’s, Sixth Circuit’s, and Ninth Circuit’s

1. Pursuant to Rule 37.6 of the Rules of this Court, IAGR and NAGRA state that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than IAGR, NAGRA, their members, or their counsel made such a monetary contribution. Timely notice was provided to the parties.

jurisdictions specifically, some of which are plaintiffs involved in litigation on the issues underlying this brief. The Associations have a direct interest in this matter because their members are the agencies that license sports wagering operators, oversee their compliance, and take enforcement action against those who offer sports wagering without a license. NAGRA's membership also includes tribal gaming regulatory agencies, whose authority rests on the tribal-state compacts and federal law now at issue in related litigation involving the same Respondent. Until this Court resolves the question presented, the Associations' members must decide whether, and how, to enforce their laws without clarity and, in some instances, with the knowledge that a regulatory requirement held to be preempted in one member's jurisdiction remains enforceable in another.

SUMMARY OF ARGUMENT

The question presented is whether the Commodity Exchange Act ("CEA"), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), preempts state laws regulating sports wagering within a State's borders when the wager is offered on an exchange registered with the Commodity Futures Trading Commission ("CFTC"). A divided panel of the Third Circuit concluded that it likely does. *KalshiEX, LLC v. Flaherty*, 172 F.4th 220 (3d Cir. 2026). The Associations submit that this Court should grant the Petition for Writ of Certiorari filed on September 2, 2026, and docketed on September 8, 2026 (the "Petition"), for three reasons.

First, state and tribal gaming regulators administer comprehensive licensing, compliance, and enforcement programs governing sports wagering and other forms of gambling. Those programs, mandated by law, protect consumers through rigorous oversight of licensed operators and the regulated businesses that support them. The governing laws also authorize enforcement against unlicensed or otherwise noncompliant operators and, in some jurisdictions, prohibit sports wagering or other gambling activities. The decision below calls into question whether regulators may apply these regulatory frameworks to sports event contracts offered on federally registered exchanges that fall within that structure, including whether they may require licensure and other consumer protection controls or enforce prohibitions on unauthorized gambling.

Second, the courts of appeals are divided. The Ninth Circuit has rejected the Third Circuit's conclusion as to state gaming law, *KalshiEX, LLC v. Assad*, ___ F.4th ___, 2026 U.S. App. LEXIS 26395 (9th Cir. Aug. 28, 2026), and has since extended that reasoning to tribal gaming under the Indian Gaming Regulatory Act ("IGRA"). *Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-7504, 2026 U.S. App. LEXIS 28327 (9th Cir. Sept. 16, 2026). The Sixth Circuit has since joined the Ninth, concluding that Kalshi had not shown that its sports event contracts are swaps and, alternatively, that the CEA neither expressly nor impliedly preempts Ohio's or Tennessee's gambling laws. *KalshiEX LLC v. Schuler*, ___ F.4th ___, 2026 U.S. App. LEXIS 29542, at *3-4 (6th Cir. Sept. 25, 2026). Appeals presenting the same question remain pending in other circuits, and the district courts are likewise split. The conflict is established, and it is growing.

Third, the question is one of exceptional importance to the agencies charged with enforcing gaming law and the public they serve. Conflicting appellate decisions have created uncertainty as to whether regulators may apply state gambling laws to the same sports event contracts while related litigation is pending in other jurisdictions. The disagreement regarding the scope or applicability of federal preemption compromises the administration of licensing and enforcement programs, including the application of consumer and integrity protections. Regulators must continue making supervisory and enforcement decisions while this disagreement persists. Furthermore, licensees and consumers need clarity about whether gambling is authorized within various jurisdictions or whether consumer protections apply. These immediate and impactful consequences warrant this Court's review without awaiting further litigation.

ARGUMENT

I. State and Tribal Regulators Administer Comprehensive Licensing and Enforcement Programs Governing Sports Wagering.

The Associations' members are charged with administering and enforcing laws that regulate or prohibit sports wagering and other forms of gambling in their respective jurisdictions. They license operators, investigate suitability, approve the events and wagers that may be offered, audit compliance, resolve patron disputes, and take enforcement action against those who offer wagering without a license. Each of those functions depends on the regulator's authority to determine who is conducting sports wagering within its jurisdiction and on what terms. The decision below calls that authority into question.

A. Regulators License and Oversee Sports Wagering Operators.

Following *Murphy v. NCAA*, 584 U.S. 453 (2018), many States enacted statutes authorizing sports wagering and assigning its oversight to a dedicated regulatory agency. *See, e.g.*, Mich. Comp. Laws §§ 432.401 to 432.419 (Lawful Sports Betting Act); N.J. Stat. Ann. §§ 5:12A-10 to -19; Ohio Rev. Code §§ 3775.01 to 3775.99; Colo. Rev. Stat. §§ 44-30-1501 to -1519; Me. Rev. Stat. Ann. tit. 8, ch. 35. Those statutes vest regulators with broad authority over the activity. Ohio’s statute, for example, gives the Ohio Casino Control Commission “jurisdiction over all persons conducting or participating in the conduct of sports gaming” and “the authority to license, regulate, investigate, and penalize those persons.” Ohio Rev. Code § 3775.02(A). Ohio’s definition of the activity subject to that authority expressly includes “exchange wagering.” *Id.* § 3775.01(O)(2).

Using that authority, regulators condition sports wagering on licensure, investigate the suitability of those who seek to offer it, approve the facilities and platforms through which wagers may be accepted, and collect the taxes imposed on the proceeds. *See, e.g.*, Ohio Rev. Code §§ 3775.02, 3775.04, 3775.09; Colo. Rev. Stat. § 44-30-1508. Suitability is not a one-time determination. Nevada, for example, evaluates the continuing suitability of its licensees for as long as a license is held. Nev. Rev. Stat. § 463.170. Each regulator then builds out these requirements by rule. *See, e.g.*, N.J. Admin. Code §§ 13:69N-1.4, -1.11; Ohio Admin. Code 3775-11-01.

B. Regulators Give Effect to These Requirements Through Continuing Oversight of the Licensee.

Sports wagering statutes establish the criteria for licensing and the operational boundaries for legal gambling. Regulators administer that framework to facilitate a live, high-volume market, governed by a comprehensive system of supervision requirements and enforcement actions against violators of the law. A license is not a single approval. It is a continuing relationship through which the regulator approves the operator's systems and products before a wager is accepted, monitors the wagering as it occurs, audits and investigates after the fact, and disciplines the operator when it falls short. Although the details vary, regulations across states follow the same pattern.

First, regulators approve how wagers are accepted before any wager is placed. In Illinois, a licensee's internal control system must be approved by the regulator before sports wagering begins, and operators may not implement any changes without further approval. Ill. Admin. Code tit. 11, § 1900.1510(b), (c). Massachusetts likewise requires operators to submit their internal controls for review, and its regulator may identify deficiencies and require changes before approving them. 205 Mass. Code Regs. 238.02. Regulators also control the wagering systems themselves. Illinois requires that the servers used to place and resolve wagers be located in the State, that the system record the geolocation of each mobile wager, and that wagering records be retained for ten years. Ill. Admin. Code tit. 11, § 1900.1450(e), (g), (h)(10). Ohio imposes comparable requirements, including that its

wagering system authenticate every device that connects to it. Ohio Admin. Code 3775-9-02(C), (G).

The same approval process governs who may wager. Tennessee requires each licensee to submit to its regulator the methodology it will use to prevent ineligible persons from placing wagers. Tenn. Comp. R. & Regs. 1350-03-.07. Massachusetts prohibits operators from establishing or maintaining an account for any person who has self-excluded. *See* 205 Mass. Code Regs. 248.02. Ohio requires account procedures ensuring that prohibited persons cannot open an account or continue to wager. Ohio Admin. Code 3775-16-03(C). It is through these approved systems that age limits, such as those in Nev. Rev. Stat. § 463.350 and Ohio Rev. Code § 3775.99(A)(2), are actually enforced at the point of the wager.

Regulators likewise determine the specific events and wager types that may be offered. State constitutions and laws establish the permissible forms of gambling, the public policy objectives and standards, and any express prohibitions. Within those boundaries, regulators implement the law by determining the types of wagers it will authorize and the conditions under which they may be offered. That responsibility includes restricting or prohibiting activities that pose an unacceptable risk to consumers or conflict with the public policy established by the legislature.

In Massachusetts, for example, the Commission reviews requests to offer wagering on particular events and categories of wagers against criteria to verify outcomes, evaluate integrity controls, and contain sufficient

safeguards to prevent unfair influence on the outcome of a wager. The Commission may grant, deny, limit, restrict, or condition those requests, or later revoke an approval. 205 Mass. Code Regs. 247.03. The Illinois Gaming Board may prohibit a type of wagering, or wagering on a specific event, that it concludes would be contrary to public policy, unfair to consumers, or harmful to the integrity of a sport, and its Administrator may suspend such wagering immediately where it poses “a significant likelihood of serious risk to the integrity of sports wagering.” Ill. Admin. Code tit. 11, § 1900.1130. Ohio and Nevada have comparable processes, Ohio Rev. Code § 3775.02(C)(1); Nev. Gaming Comm’n Reg. 22.120-.1205, and New Jersey requires notice to its regulator, together with the relevant governing body’s integrity policies, before an operator offers a new category of wagering event, N.J. Admin. Code § 13:69N-1.11. These approval processes are how event restrictions, such as Colorado’s exclusion of proposition bets on collegiate events, Colo. Rev. Stat. § 44-30-1501, and New Jersey’s list of prohibited sports events, N.J. Stat. Ann. § 5:12A-10, are given effect.

Second, regulators monitor the wagering as it occurs. Tennessee requires each licensee to maintain integrity monitoring procedures to identify unusual and suspicious wagering and to report that activity to the regulator, which may refer the matter to law enforcement, other regulators, or the relevant sports governing body. Tenn. Comp. R. & Regs. 1350-03-.06. On request, a Tennessee licensee must give the regulator “remote, read-only access” to its wagering system so that the regulator may monitor it directly. *Id.* 1350-03-.06(5). Ohio’s regulator must monitor all sports gaming in the State, directly or through an independent integrity monitor, “in order to

identify any unusual betting activities or patterns that may indicate a need for further investigation,” Ohio Rev. Code § 3775.02(I)(1); *see also* Ohio Admin. Code 3775-14-04, and Massachusetts imposes its own integrity monitoring requirements by regulation, *see* 205 Mass. Code Regs. 238.18. This monitoring is the means by which prohibitions on wagering by athletes, coaches, and officials are enforced in practice. *See* Ohio Rev. Code § 3775.13; Nev. Gaming Comm’n Reg. 22.1205; Colo. Rev. Stat. § 44-30-1502.

Third, regulators audit, investigate, and resolve disputes. Illinois may subject a licensee’s internal controls to review by an independent certified public accountant selected by the regulator, Ill. Admin. Code tit. 11, § 1900.1510(g), and requires a licensee to notify the regulator immediately if its wagering system fails, *id.* § 1900.1450(l). Ohio requires compliance audits and may terminate an audit engagement it finds deficient. Ohio Admin. Code 3775-16-19. Massachusetts regulates the handling of patron complaints, 205 Mass. Code Regs. 238.22, and Nevada’s regulators investigate and resolve disputes between licensees and patrons, Nev. Rev. Stat. § 463.362.

Fourth, regulators discipline operators. An operator that violates the applicable requirements is subject to the conditioning, suspension, or revocation of its license and to fines and civil penalties. *See, e.g.*, 205 Mass. Code Regs. 232.00; Ohio Admin. Code 3775-1-08. In Ohio, the failure to give the regulator access to records is itself a basis for discipline, and sanctions are imposed in light of “[t]he risk to the public and to the integrity of sports gaming.” Ohio Admin. Code 3775-1-08(A)(7), (C)(1).

Licensure establishes the basis for a supervisory relationship whereby regulators routinely examine and analyze a broad array of technology, operational and control systems, records, and related compliance information. State laws often provide regulators with extensive powers to investigate and take legal action against unauthorized wagering. The question presented concerns whether the CEA prevents States and Tribes from applying their sports wagering licensing, supervision, and enforcement framework to the challenged offerings.

The Ohio Casino Control Commission has described precisely that position: without licensure, the Commission “lacks awareness of whether, or to what extent, [Respondent] adheres to the various safeguards and guardrails that Ohio law requires.” Ohio Casino Control Comm’n, Notice of Intent to Impose a Penalty or Fine for Operating or Conducting Unlicensed Sports Gaming in Ohio and Opportunity for Hearing, Case No. 2026-SGR-001, at 3 (Apr. 14, 2026) (“Ohio Notice”). The consequences extend beyond the exchange’s own customers. Integrity monitoring depends on visibility across the market, and wagering activity that moves to a venue outside the monitoring system is activity regulators can no longer use to detect manipulation of the underlying events.

C. Regulators Enforce the Law Against Unlicensed Sports Wagering.

The same agencies that oversee licensed operators are responsible for enforcing the law against those who offer sports wagering without a license. In Ohio, “no person shall operate, conduct, or assist in operating or conducting sports gaming in this state without first

obtaining an appropriate sports gaming license,” Ohio Rev. Code § 3775.03(A)(1), and the Commission may “[p]enalize or fine any sports gaming licensee, applicant for a sports gaming license, or other person subject to the commission’s jurisdiction,” *id.* § 3775.02(H)(1)(a); *see also* Ohio Admin. Code 3775-1-08. Nevada likewise makes it unlawful to conduct gambling games without first procuring and maintaining the required gaming licenses. Nev. Rev. Stat. § 463.160. Illinois regulations provide that “[n]o person may engage in any activity relating to sports wagering in this State unless all required licenses have been obtained.” Ill. Admin. Code tit. 11, § 1900.150.

Enforcement against unlicensed wagering is not a secondary function. As the Ohio Casino Control Commission has explained, “[t]he cornerstone of the Commission’s mandate to ensure the integrity of sports gaming resides in enforcing its licensing regime.” Ohio Notice, at 2. The protections described above mean little if the same wagers may be placed, without those protections, through an operator that never sought a license. For that reason, regulators devote substantial resources to identifying and acting against unlicensed operators that accept wagers from their residents.

D. Tribal Regulators Administer Sports Wagering Reserved to Tribal Governments.

Tribal gaming regulatory agencies occupy a parallel role. Sports betting is class III gaming under IGRA’s implementing regulations, 25 C.F.R. § 502.4(c) (class III gaming includes “[a]ny sports betting and parimutuel wagering”); *see also* *W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059, 1062 (D.C. Cir. 2023) (“Class III gaming

. . . includes casino games, slot machines, and sports betting.”), and class III gaming on Indian lands is lawful only if conducted in conformance with a tribal-state compact, 25 U.S.C. § 2710(d)(1)(C). Those compacts are negotiated under the framework Congress established in IGRA, which contemplates the allocation of regulatory responsibility between the State and the tribe. 25 U.S.C. § 2710(d)(3)(A), (C). Congress chose those compacts as “the best mechanism to assure that the interests of both sovereign entities are met with respect to the regulation of complex gaming enterprises.” *Blue Lake*, 2026 U.S. App. LEXIS 28327, at *13-14 (quoting *Artichoke Joe’s Cal. Grand Casino v. Norton*, 353 F.3d 712, 726 (9th Cir. 2003) (quoting S. Rep. No. 100-446, at 13 (1988))).

Several States have also reserved all or part of their sports wagering markets to tribal governments. Maine, for example, limits eligibility for mobile sports wagering licenses to the federally recognized Indian tribes in the State. Me. Rev. Stat. Ann. tit. 8, § 1207(2). Michigan excluded internet sports betting conducted exclusively on Indian lands from the reach of its own statute. Mich. Comp. Laws § 432.404(4). State regulators, in turn, have recognized that sports event contracts may implicate those tribal rights directly. Nevada has advised its licensees that offering sports event contracts in a manner that violates a compacted tribal right may subject them to discipline. Nev. Gaming Control Bd., Notice to Licensees #2025-77, *Sports Event Contracts are Wagers* (Oct. 15, 2025).

Tribal regulators administer these arrangements on the premise that sports wagering on tribal lands, and within the portion of a State’s market reserved to the tribes, is subject to the compact and to applicable tribal

and state law. If a functionally identical product may be offered to the same patrons outside that framework, those regulators cannot enforce the terms on which the tribes' rights were negotiated.

Regulators built many of these programs in the years following *Murphy*, in which this Court held that “Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.” *Murphy*, 584 U.S. at 486. The Ninth Circuit has since described the authority these regulators exercise as a “power traditionally exercised by the States and Tribes.” *Assad*, 2026 U.S. App. LEXIS 26395, at *46. The decision below calls into question whether that authority reaches a product that functions as a sports wager whenever it is offered through a federally registered exchange.

II. The Courts of Appeals Are Divided on the Question Presented.

This Court grants review where “a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter.” Sup. Ct. R. 10(a). That standard is satisfied here, and the conflict has grown since the Petition was filed.

A. The Third Circuit and the Sixth and Ninth Circuits Have Reached Opposite Conclusions.

The Third Circuit held that Kalshi's sports event contracts are likely “swaps” within the CFTC's exclusive jurisdiction and that the CEA likely preempts New Jersey's sports wagering laws as applied to those

contracts. *Flaherty*, 172 F.4th 220. The Ninth Circuit reached the opposite result in a case arising from Nevada’s regulation of the same product. It found it “implausible” that Congress would displace state gambling regulation through broad and “expansive” language in a “Wall Street reform bill,” and it grounded that conclusion in the “states’ long-understood authority in this area.” *Assad*, 2026 U.S. App. LEXIS 26395, at *31, *47, *48.

The Sixth Circuit since aligned itself with the Ninth. Acknowledging that the Third and Ninth Circuits had reached “opposite results” on “substantially the same question,” the Sixth Circuit held that Kalshi had not shown that its sports event contracts are swaps within the CFTC’s exclusive jurisdiction. *Schuler*, 2026 U.S. App. LEXIS 29542, at *13 n.3, *24-25, *54. In doing so, it rejected as “too attenuated, indirect, and speculative” the downstream economic consequences that Respondent, relying on the Third Circuit’s decision, had identified. *Id.* at *45-46. The Sixth Circuit also held that even if Respondent’s offerings were swaps, that the CEA neither expressly nor impliedly preempts Ohio’s or Tennessee’s gambling laws. *Id.* at *55. It therefore affirmed the denial of a preliminary injunction in Ohio and vacated the preliminary injunction entered in Tennessee. *Id.* at *4.

These decisions cannot be reconciled. The same product, offered by the same company under the same federal registration, is presently shielded from state regulatory authority within the Third Circuit and subject to it within the Sixth and Ninth. A regulator in Nevada, Ohio, or Tennessee may treat the product as sports wagering and enforce its licensing requirements accordingly; a regulator in New Jersey may not. For the

Associations’ members, the licensing and enforcement programs described above may therefore be unenforceable in one member’s jurisdiction and fully enforceable in another, based solely upon the circuit in which that member sits. The Associations agree with Petitioners that the Sixth and Ninth Circuits have the better view, but the more immediate concern for present purposes is the conflict itself, which only this Court can resolve.

B. *Blue Lake Rancheria* Confirms that the Conflict Extends Beyond State Sports Wagering Law.

The division deepened on September 16, 2026, when the Ninth Circuit decided *Blue Lake Rancheria*. There, tribal governments brought claims under IGRA against the same Respondent. The Ninth Circuit reaffirmed its holding that Kalshi’s sports event contracts “are likely not swaps under the CEA,” *Blue Lake*, 2026 U.S. App. LEXIS 28327, at *38 (quoting *Assad*, 2026 U.S. App. LEXIS 26395, at *49), and further held that the CEA’s grant of “exclusive” jurisdiction to the CFTC does not displace IGRA’s separate regulation of class III gaming on Indian lands. *Id.* at *38-42. In the court’s words, the two statutes “simply address two different questions.” *Id.* at *41.

In reaching that result, the Ninth Circuit looked to the substance of the product rather than its label:

And we recently clarified “[t]he substance of the sports event contracts offered on Kalshi’s DCM is sports gambling, regardless of whether Kalshi calls them swaps.” . . . The analysis is functional. IGRA does not ask whether the operator labels the product a bet or an event

contract, or something else. It asks what the activity looks like.

Blue Lake, 2026 U.S. App. LEXIS 28327, at *25 (citation and emphasis omitted).

The court then stated the point more directly: “Kalshi may reshuffle the cards, but it cannot change the hand: Its sports event contracts are class III gaming.” *Id.* at *26. The Ninth Circuit also rejected Kalshi’s reliance on the Unlawful Internet Gambling Enforcement Act, explaining that Kalshi’s reading would confer upon it “a displacing effect that Congress expressly denied it.” *Id.* at *35 (citing 31 U.S.C. § 5361(b)).

The Associations do not ask this Court to resolve the merits of these holdings at this stage. *Blue Lake Rancheria* is significant for a narrower reason: it demonstrates that the conflict with the Third Circuit is not confined to a single State’s statute or a single form of regulation. The functional analysis the Ninth Circuit applied is the same analysis regulators apply every day in determining whether an activity is wagering subject to their jurisdiction. The Third Circuit’s treatment of these products as swaps within the CFTC’s exclusive jurisdiction now stands in direct tension with the Ninth Circuit’s conclusion that the same products are sports gambling for purposes of state law and class III gaming for purposes of federal law. Absent this Court’s review, the regulatory treatment of a single nationwide product will depend upon whether the State, Tribe, or regulator at issue is located in one circuit or another.

C. The Conflict Will Not Resolve Itself Without This Court’s Review.

The Third, Sixth, and Ninth Circuits are not the only courts confronting this question. An appeal presenting the same issue is pending in the Fourth Circuit, *KalshiEX LLC v. Martin*, No. 25-1892 (4th Cir. docketed Aug. 6, 2025), and in the Second Circuit, *KalshiEX LLC v. Williams*, No. 26-1835 (2d Cir. docketed July 8, 2026). As the Petition explains, related litigation is now pending in numerous States. *See* Petition, pp. 15-20. These pending matters involve the Associations’ members or will create precedent impacting the manner and extent to which the Associations’ members perform their official duties.

Further decisions of other courts will not produce uniformity. They will instead multiply the number of jurisdictions in which the Associations’ members, their licensees, and the public must operate under conflicting rules.

III. The Question Presented Is Exceptionally Important to the Regulators Charged with Enforcing Gaming Law.

This Court also grants review where a court of appeals “has decided an important question of federal law that has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c). The question presented is such a question. Whether Kalshi may offer a product that it markets as “sports betting”² in all fifty States, free of state regulation, goes “to the heart of the States’ police

2. *See* Petition, pp. 12, 15 (internal citations omitted).

power.” Petition, p. 20. The Ninth Circuit has now twice described the consequences in similar terms, finding it “implausible that Congress took ‘a wrecking ball to all sports gambling regulations built up over decades by federal, state, and tribal governments when it amended the CEA to add the definition of swap.” *Blue Lake*, 2026 U.S. App. LEXIS 28327, at *41 (quoting *Assad*, 2026 U.S. App. LEXIS 26395, at *49). For the regulators who administer those regulations, the consequences of the conflict are immediate.

A. The Conflict Compromises Regulatory Decisions About Enforcement of State Gambling Laws.

Gaming regulators are enforcement agencies. When a person offers what state law defines as sports wagering without a license, the regulator’s statutory mandate is generally to act. *See* Ohio Rev. Code §§ 3775.02(A), (H)(1)(a), 3775.03(A)(1); Nev. Rev. Stat. § 463.160. The conflict concerns whether federal law limits the applicability of state regulatory and enforcement responsibilities to sports event contracts. A regulator within the Third Circuit has been told that enforcement against these products is likely preempted. A regulator within the Ninth Circuit has been told the opposite, and that the same products are sports gambling offered without the license state law requires. A regulator within the Sixth Circuit has likewise been told that Respondent is unlikely to succeed in showing that enforcement of state gambling law against these products is preempted. Other circuits have addressed requests for interim relief, without resolving the disagreement over the governing federal law. Even the controlling decisions in the Third, Sixth,

and Ninth Circuits were rendered at the preliminary injunction stage and speak only to likelihood of success.

The Associations' members and other regulators outside the Third, Sixth, and Ninth Circuits are therefore left to choose between two unsatisfactory courses. They may enforce, and invite litigation over the scope of their authority whose outcome depends on how a court of appeals that has not yet spoken will align itself with a conflict this Court has not resolved. Ohio's experience illustrates the point. After the district court declined to enjoin enforcement of Ohio law, the Ohio Casino Control Commission issued a notice of intent to fine Respondent for operating unlicensed sports gaming. Ohio Notice, at 1. The Commission explained that, because Respondent had not sought licensure, the Commission "lacks awareness of whether, or to what extent, [it] adheres to the various safeguards and guardrails that Ohio law requires." *Id.* at 3. Respondent sued, raising the preemption issue as part of its defense, further illustrating the federal question presented here. The Sixth Circuit has since affirmed the denial of preliminary relief, *Schuler*, 2026 U.S. App. LEXIS 29542, at *4, but that ruling was likewise rendered at the preliminary injunction stage, and the durability of the Commission's proceeding still depends on the answer to the question presented.

Regulators are obligated to exercise their enforcement to administer governing laws. Continuing to administer their carefully constructed regulatory frameworks will require additional litigation, while deferring action may leave applicable laws and state policy unenforced while these issues remain unresolved. Those consequences make resolution essential to avoid displacing regulators'

responsibilities to enforce the laws and will of the people in the jurisdictions they represent. Additionally, even if a regulator takes no action, they may be preemptively sued by a substantially affected party seeking declaratory relief.

B. Regulators Cannot Apply Consistent Rules to Licensed Operators, Unlicensed Operators, and Exchanges Offering the Same Product.

Regulators addressed sports wagering through two well-understood categories. Licensed operators pay license fees and taxes, submit to suitability investigations, and comply with the age, participant, event, integrity, and responsible gaming requirements described above. Unlicensed operators are subject to enforcement action for operating without a license. The sports event contracts at issue fall into neither category with certainty. Federally designated exchanges are subject to CEA and CFTC requirements. The disputed issue is whether those rules displace carefully constructed regulatory frameworks governing the boundaries of states sports wagering and gambling.

That uncertainty affects every part of a regulator's program. The Associations' members are unable to consistently explain to their licensees why, or if, a wager that is subject to comprehensive regulation when accepted by the licensee may be offered to the same patron, on the same event, free of those requirements by an exchange. Nor can they consistently explain to the public why, or if, a product they would treat as unlawful if offered by an unlicensed website may be lawful when offered through an exchange registered with the CFTC. Moreover, regulators

must now determine whether their own licensees may associate with exchanges offering these contracts. Nevada advised its licensees that sports event contracts may be offered in Nevada only by an entity holding a nonrestricted gaming license with sports pool approval, and that offering such contracts in another State without complying with that State's licensing regime, or partnering with an entity that does, may bear on the licensee's suitability. Nev. Gaming Control Bd., Notice to Licensees #2025-77; *see also* Nev. Gaming Control Bd., Notice to Licensees #2025-90 (Nov. 12, 2025). Whether a regulator may provide and apply that kind of guidance, and how it interacts with the law of the State in which the conduct occurs, depends on the answer to the question presented.

C. The Conflict Undermines the Consumer and Integrity Protections Regulators Enforce.

As described in Part I.B, the protections regulators administer are enforced through their oversight of the entity accepting the wager. The age requirements in Nev. Rev. Stat. § 463.350 and Ohio Rev. Code § 3775.99(A)(2), the prohibited-participant rules in Ohio Rev. Code § 3775.13 and Nevada Gaming Commission Regulation 22.1205, the collegiate event restrictions in Colo. Rev. Stat. § 44-30-1501 and N.J. Stat. Ann. § 5:12A-10, and the responsible gaming and advertising rules adopted under Ohio Rev. Code § 3775.02(B) all depend on the regulator's authority over that entity. The conflict concerns whether the regulator can require compliance with lawfully enacted consumer protections and boundaries on gambling activity. The Ohio Casino Control Commission, for example, alleged that Respondent offers sports wagering in Ohio to individuals between eighteen and twenty years of age, maintains

a voluntary exclusion program less extensive than the one Ohio law requires, and offers wagers on sporting events the Commission has not approved. Ohio Notice, at 3. Those allegations illustrate specific requirements the Commission sought to enforce. Whether the Commission may address those concerns is precisely what the conflict among the circuits leaves unresolved.

Tribal regulators face the same uncertainty. If Respondent may offer sports event contracts in every State without regard to state or tribal law, it is at best unclear whether tribal regulators may enforce the terms on which their governments' exclusive rights were negotiated. As *Blue Lake Rancheria* illustrates, tribal governments are already litigating that question, and the answer they receive currently depends upon the circuit in which their lands are located.

Finally, the uncertainty created by the decision below falls most directly on regulatory agencies themselves. Regulators must decide whether to adopt rules addressing these products, what guidance to provide their licensees, how to allocate limited investigative and enforcement resources among licensed operators and exchanges, and whether to pursue enforcement actions whose validity may turn on a question this Court has not resolved. Each of those decisions carries consequences for licensees, for patrons, and for the credibility of the regulatory programs themselves, and each is being made today on the basis of conflicting appellate decisions. That uncertainty is itself a reason for review.

CONCLUSION

Petitioners correctly observe that, “for more than a century, the States have been the primary regulators of gambling in this country.” Petition, p. 1. Today, that regulation is carried out by the agencies the Associations represent, through licensing, compliance oversight, and enforcement. The conflicting appellate interpretations leave unresolved the federal boundary governing the applicability of state gambling laws to the challenged event contracts. This uncertainty directly affects a regulator’s ability to administer licensing and supervision requirements that protect consumers and confine gambling to the policy parameters established by State laws. The Ninth Circuit’s decisions in *Assad* and *Blue Lake Rancheria*, together with the Sixth Circuit’s decision in *Schuler*, confirm that the courts of appeals are divided on that question. For the foregoing reasons, the Associations respectfully request that this Court grant the Petition so that the Associations’ members, and the licensees and public they serve, may know which rules apply.

Respectfully submitted,

MARC H. ELLINGER
ELLINGER BELL LLC
308 East High Street,
Suite 300
Jefferson City, MO 65101

MARC W. DUNBAR
Counsel of Record
DANIEL J. MCGINN
JONES WALKER LLP
106 East College Avenue,
Suite 1200
Tallahassee, FL 32301
(850) 214-5100
mdunbar@joneswalker.com

Counsel for Amici Curiae